



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, बुधवार, 13 मार्च, 1991/22 फालुज, 1912

हिमाचल प्रदेश सरकार

आबकारी एवं कराधान विभाग

आदेश

शिमला-2, 6 फरवरी, 1991

संख्या ई० एक्स० एन० एफ०(१५) १/८७(लूज)।—हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश मनोरंजन शुल्क अधिनियम, 1968 (अधिनियम संख्या 1968 का १२) की धारा १२ की उप-धारा (३) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, ऋथित अधिनियम के अधीन हिन्दी फीचर किल्म “भीम गर्जना” को ढा० अम्बेदकर के जन्म शताब्दी समारोह मनाये जाने के दौरान मनोरंजन शुल्क अदा करने के दायित्व से एक सप्ताह के लिए छूट प्रदान करते हैं।

आदेश द्वारा,
अत्तर सिंह,
वित्तायुक्त एवं सचिव ।

निर्वाचन विभाग

अधिसूचना

शिखला-2, 7 फरवरी, 1991

संख्या 3-1/91-ई० एल० एन०.—भारत निर्वाचन आयोग की अधिसूचना संख्या 82/हि०प्र०/३/९०, तारीख 8 जनवरी, 1991 तकानुसार 18 पौष, 1912 (शक्) अंग्रेजी रूपान्तर सहित सर्वे-साधारण की सूचना हेतु प्रकाशित करता है।

आदेश से,

श्रत्तर सिंह,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

भारत निर्वाचन आयोग

निर्वाचन सदन,
अशोक रोड,
नई दिल्ली-110001

8 जनवरी, 1991

तारीख—
18 पौष, 1912 (शक्)

अधिसूचना

संख्या 82/हि०प्र०/३/९०.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के प्रत्युत्तर में निर्वाचन आयोग की 1990 की निर्वाचन अर्जी संख्या 3 में हिमाचल प्रदेश उच्च न्यायालय शिपला के तारीख 10-12-1990 का तिर्णथ एतद्वारा प्रकाशित करता है।

आदेश से,
राम किशन,
अवर सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashok Road,
New Delhi-110001

8th January, 1991

Dated _____
18 Pausa, 1912 (Saka)

NOTIFICATION

No. 82/HP-LA/3/90.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order, dated

10th December, 1990 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 3 of 1990.

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Election Petition No. 3 of 1990.

Date of decision December 10, 1990.

Dr. Rakesh Kumar

.. Petitioner.

Versus

Shri J. P. Negi and another

.. Respondents.

Coram

The Hon'ble Mr. Justice

V. P. BHATNAGAR, J.

Whether approved for reporting?

Yes

For the Petitioner

Dr. Rakesh Kumar, petitioner, in person
Shri R. M. Bisht, Law Officer, for
Respondent 1.

For the respondents

Shri Inder Singh, Advocate, for
Respondent 2 with him Shri Ashok
Sharma, Advocate.

V. P. BHATNAGAR, J. (Oral)

By way of the present election petition, Dr. Rakesh Kumar has challenged the election of Shri Suresh Bhardwaj, respondent 2, to the Himachal Pradesh Legislative Assembly from 8—Shimla constituency. The petitioner is stated to have passed his M. B. B. S. Examination from Indira Gandhi Medical College, Shimla, in November, 1988, he completed his compulsory internship, in December, 1989, and thereafter joined the house job for a period of six month with effect from January 1, 1990 at an honorarium of Rs. 2750/- per mensem. He wanted to fight elections for 8—Shimla constituency but as per his allegations, his nomination papers as independent candidate were improperly rejected by the Returning Officer on February 5, 1990. It is the sole ground on which the election of respondent 2 has been challenged.

Respondent 2 raised a number of preliminary objection, in his reply which gave rise to the framing of as many as six issues on September 5, 1990. Since the election petition can be disposed of as a result of the findings which are recorded hereunder against issue No. 1, there appears no need to advert to the remaining issues. Issue No. 1 has arisen on account of a preliminary objection taken up by respondent 2 that the petitioner has failed to comply with the mandatory provisions of section 81 (3) of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') inasmuch as the petition was not accompanied by as many copies thereof as there were respondents mentioned in the petition. Also, the copies were not attested by the petitioner under his own signature to be true copies of the petition.

Issue No. 1 runs as follows:—

"Whether the petition is liable to be dismissed due to non-compliance of the provisions of section 81 (3) of the Representation of the People Act as alleged?"

O. P. R.

ISSUE NO. 1

Both the parties were afforded due opportunity to adduce evidence on the above issue. Whereas respondents 2 examined Shri M. R. Verma, Registrar of this court as RW 2 in addition to himself stepping into the witness box as RW. 1, the petitioner did not adduce any evidence in rebuttal. In other words, he did not have anything to say on the points on which evidence was led by respondent 2 pertaining to the above issue about non-compliance of section 81 (3) of the Act.

To begin with the facts which are relevant and have not been disputed at the time of arguments may be stated. This election petition was filed on April 12, 1990, that is, well within the period of limitation which infact expired on April 16, 1990. It may be noticed here that the last date of limitation was April 14, 1990 but it being a holiday on account of second Saturday followed by Sunday, the last day for filing election petition in this case was April 16, 1990, as stated above. The election petition was presented before the Registrar of this court on April 12, 1990 who marked it to the scrutiny Assistant for examination. The perusal of the scrutiny sheet marked 'B' shows that the scrutiny Assistant, *vide* his Note dated April 13, 1990 *inter alia* raised an objection at S. No. 9 to the effect that the process fee along spare copies and envelopes had not been filed. The matter was the fixed for being listed before the Registrar on April 18, 1990. On the said date the petitioner was present before the Registrar in person and the Registrar recorded in his order that the objection had been removed by the petitioner. It means that the copies of original petition were handed over in the registry on April 18, 1990. It may be worth-while to observe here that the period of limitation had expired by the date. That the spare copies were handed over in the registry on April 18, 1990 is further borne out from the perusal of the index marked 'C' wherein the above fact stands recorded under the dated signatures of the petitioner himself. The provisions of the law have to be examined keeping in view the above facts which are not disputed.

A bare perusal of section 81(3) of the Act makes it abundantly clear that it is incumbent upon the petitioner to attached with his election petition copies of the petition equal to the number of respondents and further that such copies have to be attested by him under his own signature to be true copies of the petition. The question of attestation would be dealt with later on and for the present. I would address myself to that part of sub-section (3) of section 81 which makes it a must that copies of the election petition should be attached with the election petition when it is presented. The effect on non-compliance of this provision is contained in section 86(1) of the Act which provides that an election petition which does not comply with the provisions of section 81 or section 82 or section 117 shall be dismissed by the High Court. Once again, the mandate of the law is absolutely clear. To reiterate, the provision of law is that if the petitioner fails to file with the election petition copies of the petition equivalent in number to that of the respondents of the election petition would be dismissed on that short ground. Framers of the law had specific reason while putting the above provision on the statute Book. A election petition cannot be permitted to remain pending for a period more than what is absolutely necessary. For the successful running of a democratic system of Government it is a must that a shadow cast on the election of a person to the legislature of the country to remain one way or the other the minimum possible time. Actually, a specific provision to that effect stands made in section 86(6) and (7) of the Act itself. Moreover, there is a catena of case law to fortify the conclusion arrived at and out-lined by me above. Reference in this connection may be had to the law laid down in *Satya Narain v. Dhuja Ram and others* (AIR 1971 SUPREME COURT 1185). It is a case which applies to the facts of the case in hand with all appositeness.

Equally mandatory and with the same fatal results to the election petition is the other requirement incorporated in section 81 (3) pertaining to the copies of the election petition being attested by the petitioner under his own signature to be true copies of the petition. The dismissal for such a lacuna is postulated once again in section 86 (1) of the Act. Support on this point can be had from *Sharif-ud-Din v. Abdul Gani Lone* (AIR 1980 SUPREME COURT 303) and *Ved Parkash Gaur v. Sukhan and others* (AIR 1984 DELHI 276). As regard the facts on this point, it has not been and cannot be disputed that the spare copies handed over to the Registry on April 18, 1990, did not contain any attestation clause at all. If so, the question of the petitioner having signed such a clause would not arise, on this score as well, the preliminary objection raised by respondent 2 and incorporated in Issue No. 1 is likely to prevail and the election petition liable to be dismissed.

Shri Indar Singh, learned counsel for respondent 2, has also brought to my notice a number of discrepancies in between the copy R-2 which was admittedly delivered to the respondent 2 at the time service was effected upon him and the original copy of the election petition. It is not necessary to deal with the above point in detail as the election petition has to fail in view of the observations already made above.

Dr. Rakesh Kumar has not been represented by any counsel before this court. His only argument today has been that he should have been provided a counsel by the court since he was a lay man. The qualifications of the petitioner have already been stated above. There is no material before me to come to the conclusion that he could not have engaged a counsel if he had seriously wanted to do so.

For the reasons stated above, Issue No. 1 is decided in favour of respondent 2 and the election petition dismissed. The petitioner will pay a sum of Rs. 500/- as costs to respondent 2.

December 10, 1990.

Sd/-
(V. P. BHATNAGAR), J.

By order,
RAM KISHAN,
Under Secretary,
Election Commission of India.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला-५ द्वारा मुद्रित तथा प्रकाशित ।